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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 248

CENTRAL PACKING COMPANY, INC.,
Petitioner,

vs.

RYDER TRUCK RENTAL, INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

REPLY OF PETITIONER TO BRIEF FOR RESPONDENT IN OPPOSITION

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I.

Petitioner contends, and contended in its Petition For Rehearing below, that the Court of Appeals usurped a jury's function and thereby committed error when it determined as a matter of law, and in the absence of any relevant finding of fact, that Petitioner breached the Lease in question. As a result, Petitioner was denied an opportunity to offer evidence showing that the normal and

ordinary conduct of its business did not require use of the leased equipment. Respondent's Brief contends, in effect, that Petitioner's position in this regard is illogical and that Petitioner's hypothetical fact situations illustrating the type of factual conditions which a jury might find are refuted by the Record. Neither of these contentions withstands analysis.

First, since Petitioner was obligated to use the equipment in the "normal and ordinary conduct of its business", a *fact* inquiry must be made to determine what that "normal and ordinary conduct" was. This inquiry must be concluded before any determination can be made as to breach. Such an inquiry has not been made, and if the majority opinion of the Tenth Circuit is allowed to stand, it will not be made, thus depriving Petitioner of its right to a jury trial on this fact issue. The determination of a breach of contract in this case is not an exercise in logic as Respondent urges, but a matter of factual determination which is the precise function of a jury.

Secondly, Respondent's contention that Petitioner's hypothetical fact situations as set forth in its Brief are unsupported by the Record misses the point entirely. The vital point is that *no* evidence was presented and *no* consideration was given by the Court of Appeals to the question of whether or not non-use of the equipment was justified in light of the normal and ordinary conduct of this Petitioner's business. Such evidence could not properly have been presented before the Court of Appeals any more than it can properly be presented or considered by this Court. Respondent's criticism of Petitioner's assumed illustrative fact situations merely serves to emphasize the legal necessity of presenting to a jury all available evidence on this issue before any determination can properly be made as to whether or not there was a breach of the lease.

II.

The decisions of this Court refute Respondent's contention that this Court has an inflexible rule that it will never, under any circumstances, review decisions of Courts of Appeals involving solely, or, as here, partially, questions of local law. Several factors which this Court has found significant in granting review of cases involving local law issues are present here. *First*, this Court has indicated that its rule against review of local law questions has greater force when District Court and Court of Appeals judgments exhibit a unanimity of opinion on a local law question. (See *Appalachian Power Co.* v. *American Institute of Certified Public Accountants*, 80 S. Ct. 16 (1959)). The case at bar exhibits less than unanimity, to say the least, for the District Judge and one Circuit Judge have agreed with Petitioner's position. *Secondly*, no local law of any particular state was cited by the Court of Appeals in its decision (See *Carroll* v. *United States*, 354 U.S. 394, 415 (1957) stating that "Since the Court of Appeals relied on precedents of general applicability . . . we do not consider that this case falls within the policy that ordinarily causes us to adhere to that court's view on local law matters.") *Finally*, it is Petitioner's contention and it was the position of the dissenting Circuit Judge, that, in view of the contractual provisions of, and the omissions from, the Lease in question, a covenant of mandatory use could not be reasonably implied in the Lease. Where the reasonableness of a court's interpretation has been called into question this Court has granted certiorari and considered local law questions. (See *United States* v. *Durham Lumber Co.*, 363 U.S. 522, 526 (1960)).

CONCLUSION

For the foregoing reasons it is submitted that this Court should review the jury trial question, which is clearly federal in nature, and that this Court should further review the question of the reasonableness of the contractual implication made by the Court of Appeals.

Respectfully submitted,

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